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NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

October 18, 1983

Tom Daggett
United States Environmental
Protection Agency
230 So. Dearborn
Chicago, Illinois 60604
Mail Code 5C-16

Dear Mr. Daggett:

Thank you for the information regarding the Superfund ranking of the Monsanto toxic waste landfill located in Sauget, Illinois. As you requested, I have enclosed a copy of the most recent court order in People v. Monsanto Co. (St. Clair County Circuit Court, Docket No. 82-CH-195).

Please feel free to contact Allen Samelson at (217) 782-9031 if you wish to discuss the proceedings in that case.

Very truly yours,

A handwritten signature in cursive script, appearing to read "V. Moreth".

Vincent W. Moreth
Assistant Attorney General
Environmental Control Division
Southern Region

VWM:dm

cc: Allen Samelson

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED

JAN 7 1983

PEOPLE OF THE STATE OF
ILLINOIS,

Plaintiff,

vs.

MONSANTO COMPANY,

Defendant.

A. MARVIN HELART
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

CIVIL NO. 82-3229

O R D E R

FOREMAN, Chief Judge:

Before the Court is plaintiff's Motion to Remand, filed August 2, 1982, pursuant to 28 U.S.C. §1447(c). Plaintiff's complaint seeks injunctive relief and civil penalties for alleged contaminants and hazardous substances alleged to be on Monsanto's property, which are causing pollution and a public nuisance. Plaintiff seeks to have this action returned to the Circuit Court, Twentieth Judicial Circuit, St. Clair County, Illinois, from whence it was removed on July 21, 1982.

Defendant filed a Petition for Removal claiming this is an action that could have been brought originally in federal court under diversity jurisdiction pursuant to 28 U.S.C. §1332. Defendant acknowledges that there can be no diversity of citizenship between the State of Illinois and Monsanto because a state is not considered a citizen of any state for the purposes of diversity jurisdiction. People of State of Ill. v. Kerr-McGee Chem. Corp., 677 F.2d 571, 575

n. 5 (7th Cir. 1982); Nuclear Engineering Co. v. Scott, 660 F.2d 241, 250 (7th Cir. 1981). Defendant alleges, however, that the State of Illinois is really suing on behalf of particular individuals, and that diversity exists between it and those individuals.

Defendant relies on State of Conn. v. Levi Strauss & Co., 471 F.Supp. 363 (D. Conn. 1979) to support the argument that diversity jurisdiction was properly invoked. In Levi the State sued to collect refunds on behalf of identifiable purchasers of defendant's products alleging that defendant charged artificially high prices in violation of state laws. The Court held that the citizen status of the purchasers, rather than the sovereign status of their benefactor, controlled for diversity purposes. 471 F.Supp. at 371. While rarely applied to diversity jurisdiction, this reasoning has often been used by the Supreme Court to protect its original jurisdiction. The Supreme Court has refused to take original jurisdiction in disputes between states whenever it appeared that the state was bringing the claims of specific citizens. Pennsylvania v. New Jersey, 426 U.S. 660, 665-66 (1976). The Court, however, finds that the principle set out in Levi is inapplicable to the facts of the instant case.

The dispositive issue in the original jurisdiction cases was whether the state's case was a "public" or "private" action. Pennsylvania v. New Jersey, supra, at 666. In Pennsylvania the state sued to collect money which was alleged to be improperly taken from certain citizens by New Jersey via taxes. No sovereign interests of the state were implicated. The Supreme Court classified Pennsylvania's case as merely a collectivity of private suits, and,

thus, refused to grant the state sovereign status for jurisdictional purposes. The complaint of the State of Illinois in this case, however, presents an excellent example of a "public" suit. The number of potential private plaintiffs and the extent of their damages, is unknown. Moreover, private parties will receive no compensation from the instant action. Finally, there is a substantial state interest. Common law nuisance and Ill.Rev.Stat., ch. 14, para. 12, which authorizes the Attorney General to file suits to prevent pollution, both reflect the strong sovereign interest of the State of Illinois in preventing pollution within its borders. People ex rel Scott v. U.S. Steel Corp., 400 Ill.App. 3d 607, 352 N.E. 2d 225, 228-29 (1976). Thus, none of the factors that made the case in Levi a collectivity of private suits are present in this case.

Accordingly, because the State of Illinois is suing as a sovereign, there can be no diversity jurisdiction. Therefore, **plaintiff's Motion to Remand is hereby GRANTED**, and this case is hereby REMANDED to the Circuit Court, Twentieth Judicial Circuit, in and for the County of St. Clair, State of Illinois.

IT IS SO ORDERED.

DATED: Jan 6, 1983

James L. Foreman
CHIEF JUDGE